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July 30, 2019

Via U.S. Certified Mail  
U.S. General Services Administration  
FOIA Requester Service Center (H3)  
1800 F. Street, NW, Room 7308  
Washington, DC 20405

Re: FOIA appeal

Dear FOIA Officer:

I am appealing the General Services Administration ("GSA") denial (dated July 17, 2019) of my Freedom of Information Act ("FOIA") request, which I submitted on July 3, 2019.

The FOIA request and GSA's denial are enclosed herewith.

I am appealing the denial of my request as I disagree with GSA regarding the asserted exemption. Specifically, GSA is incorrect in stating that the release of the Internet Protocol Address would constitute a "clearly unwarranted invasion of personal privacy," under 5 U.S.C. § 552(b)(6) as that term has been construed under FOIA case law and is incorrect in relying on 5 U.S.C. § 552(b)(5), the deliberative process privilege, in not releasing "all information gathered by or created by GSA pertaining to the comments submitted on beta.sam.gov."

First, GSA, even if portions of the requested documents were not releasable pursuant to FOIA, GSA is required to redact that information and release the remainder of the requested information, which it did not do.

Second, the deliberative process privilege applies to only intra-agency communications, not communications with outside persons. The impostor comments that form the basis of my FOIA request were made pretending to be me. The fraudulent comments and GSA's follow up regarding these fraudulent comments is the information requested in my FOIA request. These comments were not made by GSA employees in the normal give and take of PRE – policy matters. The deliberative process privilege protects "advice, recommendations, and opinions which are part of the deliberative, consultative, decision-making processes of government." *N.L.R.B. v. Sears-Roebuck & Co.*, 421 U.S. 132, 150 (1975). Comments made by persons perpetrating a fraud by misusing the beta.sam.gov and submitting comments that purport to be from someone else is not part of any



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deliberative, consultative, decision-making process of the government. Further, any information gathered or created pertaining to those fraudulent comments is not part of any consultation regarding policy. Even if part of the information requested were deliberative, (it is not) by discussing these comments with me, the FOIA requester, the agency has waived any "privilege" it may have had. As such, reliance on this exemption is misplaced and the information should be released forthwith.

Third, an IP address belonging to someone who has perpetrated a fraud using beta.sam.gov (and who has probably acted criminally) does not have any privacy expectation. It is not a "clearly unwarranted invasion of personal privacy" to release an IP address for comments made on a public government website claiming to be someone they are not, especially where the requester is the one who the impostor is claiming to be. It is important to note that Exemption 6 of the FOIA is not absolute and to warrant protection under Exemption 6, information must first meet its threshold requirement of being "personnel and medical files and similar files." Once it has been established that information meets the threshold requirement of Exemption 6, the focus of the inquiry turns to whether disclosure of the records at issue "would constitute a clearly unwarranted invasion of personal privacy." This requires a balancing of the public's right to disclosure against the individual's right to privacy. There is no protectible privacy interest where someone perpetrates a fraud and there is certainly a public interest in releasing the IP address of the person perpetrating the fraud. In sum, reliance on Exemption 6 to withhold the information requested is improper.

I expect to receive the requested information, as it is not exempt from disclosure pursuant to FOIA.

Sincerely,

A handwritten signature in black ink, appearing to read "RM", followed by a long horizontal flourish.

Ronald C. Martin  
President and CEO

Enclosures

cc: Ruth Ann Azeredo, Esq.